

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND**

WAGNER JACINTO AND
CESILIA RODRIGUEZ

Plaintiffs,

vs.

C.A. No. 1:20-cv-00384

WILMINGTON TRUST COMPANY AS
SUCCESSOR TRUSTEE FOR THE BENEFIT
OF THE CERTIFICATE HOLDERS OF
POPLAR ABS, INC MORTGAGE
PASS-THROUGH CERTIFICATES SERIES
2005-C, PHH MORTGAGE CORPORATION

Defendants.

**DEFENDANTS' OBJECTION TO PLAINTIFFS'
MOTION TO REMOVE CASE FROM TRIAL CALENDAR**

Defendants PHH Mortgage Corporation ("PHH") and Wilmington Trust Company as successor trustee to The Bank of New York as successor trustee for JPMorgan Chase Bank, N.A., as Trustee for the benefit of the Certificateholders of Popular ABS, Inc. Mortgage Pass-Through Certificates Series 2005-C ("Wilmington") (collectively "Defendants") object to the *Motion to Remove Case from Trial Calendar* ("Motion") (ECF Nos. 54 and 55) filed by plaintiffs Wagner Jacinto and Cesilia Rodriguez ("Plaintiffs") over the Memorial Day Holiday Weekend, at approximately 6:30 p.m. on Saturday, May 27, 2023. This matter is currently scheduled for a trial calendar call on May 31, 2023.

This Court scheduled the trial calendar call over three weeks ago, on May 4, 2023, and the Court has repeatedly advised the parties that they must file a Motion to Continue to request removal from the calendar call. Notwithstanding these repeated reminders, Plaintiffs waited until a holiday weekend to make their request, leaving only one business day before the scheduled calendar call,

using the same basis they used for a continuance two months ago. The Motion requests a continuance on the basis that PHH has allegedly not complied with a *subpoena duces tecum* (“*Subpoena*”) that Plaintiffs served on December 30, 2021.

PHH responded to the *Subpoena* initially on January 25, 2022, and served supplemental responses on February 28, 2023 and May 1, 2023. PHH has produced a total of 12,678 pages of responsive documents on July 2, 2021, January 25, 2022, April 22, 2022, May 20, 2022, September 14, 2022, February 28, 2023, and May 1, 2023. In addition, on March 27, 2023, PHH provided a 25-page letter responding to correspondence from Plaintiffs dated February 23, 2023 and March 22, 2023 alleging that PHH had not fully complied with the *Subpoena*. The March 27, 2023, letter detailed PHH’s responses to the *Subpoena* and disputed Plaintiffs’ characterization that the production was incomplete. The only documents that were withheld from production as of March 27, 2023 were confidential contracts pending the Court’s order on PHH’s Motion for Confidentiality Order. Once the Court entered the Confidentiality Order on May 1, 2023, PHH produced the final supplementation the same day, noting in the cover correspondence that the production completed its response to the *Subpoena*.

The Motion claims that Plaintiffs’ counsel needs “additional time” to file a motion to compel and for sanctions concerning the *Subpoena*. This is the same reason that was provided over two months ago and Plaintiffs’ counsel has done nothing in the interim, despite receiving a 25-page letter on March 27, 2023 detailing PHH’s response to the *Subpoena* and receiving a final supplementation on May 1, 2023 indicating that PHH’s response to the *Subpoena* was complete. Plaintiffs’ counsel’s continued unjustified delay does not warrant any further continuation of trial calendar call. This case was filed in August 2020. Defendants are prepared to proceed with trial within a reasonable time to be scheduled at the May 31, 2023 trial calendar call.

WHEREFORE, Defendants respectfully request that the Court deny Plaintiffs' Motion, proceed with the Trial Calendar Call as scheduled for May 31, 2023, and schedule this matter for a trial date certain.

PHH MORTGAGE CORPORATION AND
WILMINGTON TRUST COMPANY AS
SUCCESSOR TRUSTEE TO THE BANK OF
NEW YORK AS SUCCESSOR TRUSTEE FOR
JPMORGAN CHASE BANK, N.A., AS TRUSTEE
FOR THE BENEFIT OF THE
CERTIFICATEHOLDERS OF POPULAR ABS,
INC. MORTGAGE PASS-THROUGH
CERTIFICATES SERIES 2005-C
By Their Attorneys,

/s/ Krystle G. Tadesse

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Dated: May 30, 2023

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the 30th day of May 2023 this document, filed through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF), and paper copies will be mailed to those indicated as non-registered participants.

/s/ Krystle G. Tadesse

Krystle G. Tadesse